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84-906 (3)
No.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

GARY CARSON

v.

AT&T TECHNOLOGIES, INC.
(FORMERLY WESTERN ELECTRIC COMPANY, INC.)

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION
TO PETITION FOR A WRIT OF CERTIORARI

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24 pp

QUESTION PRESENTED

I. Is the Court of Appeals required, n the exercise of its appellate jurisdiction, o issue findings of fact and conclusions f law.

Pursuant to Rule 28.1 AT&T Technologies, Inc.'s parent corporation is American Telephone and Telegraph Company and its subsidiary is Bell Telephone Laboratories, Inc.

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OPINIONS BELOW

The order and opinion of the United States District Court for the Southern District of Ohio, containing the trial court's findings of fact and conclusions of law, and the per curiam decision of the United States Court of Appeals for the Sixth Circuit, from which petitioner seeks this Court's review, are reproduced in the attached appendix.

STATEMENT OF JURISDICTION

Petitioner seeks to invoke the jurisdiction of the Court pursuant to 28 U.S.C. § 1254 (1966) for review by writ of certiorari of the final judgment and order of the United States Court of Appeals for the Sixth Circuit issued on July 31, 1984. Petitioner served his Petition for Writ of Certiorari on September 30, 1984 by United States mail.

Rule 36 Federal Rules of Appellate Procedure:

> The notation of a judgment in the docket constitutes entry of the judgment. The clerk shall prepare, sign and enter the judgment following receipt of the opinion of the court unless the opinion directs settlement of the form of the judgment, in which event the clerk shall prepare, sign and enter the judgment following final settlement by the court. If a judgment is rendered without an opinion, the clerk shall prepare, sign and enter the judgment following instruction from the court. The clerk shall, on the date judgment is entered, mail to all parties a copy of the opinion, if any, or of the judgment if no opinion was written, and notice of the date of entry of the judgment.

Rule 52(a) Federal Rules of Civil Procedure:

> (a) **Effect.** In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall

Rule 52(a) Continued

not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in Rule 41(b).

Rule 17(.1) Supreme Court Rules

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict

Rule 17(.1) Continued

> with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> (b) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.
>
> (c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

Act of Feb. 16, 1875, ch. 77 § 1, 18 Stat. 315, repealed by Schedule of Laws Repealed, 63 Stat. 109, ch. 139 § 141 (May 29, 1949):

> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the circuit courts of the United States, in deciding causes of admiralty and maritime jurisdiction

Act of Feb. 16, 1875 Continued

on the instance-side of the court, shall find the facts and the conclusions of law upon which it renders its judgments or decrees, and shall state the facts and conclusions of law separately. And in finding the facts, as provided, said court may, upon the consent of the parties who shall have appeared and put any matter of fact in issue, and subject to such general rules in the premises as shall be made and provided from time to time, impanel a jury of not less than five and not more than twelve persons, to whom shall be submitted the issues of fact in such cause, under the direction of the court, as in cases at common law. And the finding of such jury, unless set aside for lawful cause, shall be entered of record, and stand as the finding of the court, upon which judgment shall be entered according to law. The review of the judgments and decrees entered upon such findings by the Supreme Court, upon appeal, shall be limited to a determination of the questions of law arising upon the record, and to such rulings of the circuit court, excepted to at the time, as may be presented by a bill of exceptions, prepared as in actions at law.

Act of March 3, 1876, ch. 137, § 1, 18 Stat. 470:

> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the circuit courts of the United States shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or in which the United States are plaintiffs or petitioners, or in which there shall be a controversy between citizens of different States or a controversy between citizens of the same State claiming lands under grants of different States, or a controversy between citizens of a State and foreign states, citizens, or subjects; and shall have exclusive cognizance of all crimes and offenses cognizable under the authority of the United States, except as otherwise provided by law, and concurrent jurisdiction with the district courts of the crimes and offenses cognizable therein. But no person shall be arrested in one district for trial in another in any civil action before a circuit or district court.

Act of March 3, 1876 Continued

> And no civil suit shall be brought before either of said courts against any person by any original process or proceeding in any other district than that whereof he is an inhabitant or in which he shall be found at the time of serving such process or commencing such proceeding, except as hereinafter provided; nor shall any circuit or district court have cognizance of any suit founded on contract in favor of an assignee, unless a suit might have been prosecuted in such court to recover thereon if no assignment had been made, except in cases of promissory notes negotiable by the law merchant and bills of exchange. And the circuit courts shall also have appellate jurisdiction from the district courts under the regulations and restrictions prescribed by law.

STATEMENT OF THE CASE

Petitioner Gary Carson, ("Carson"), formerly employed by Respondent, AT&T Technologies, Inc. ("the Company") instituted this action on December 15, 1977 pursuant to Title VII of the Civil Rights Act of 1964, as amended, Title 52 U.S.C. § 2000e et seq. The action was tried before the United States District Court for the Southern District of Ohio for nine days beginning on March 1, 1982. Throughout the entire proceedings in the district court Mr. Carson was represented by counsel experienced in litigating discrimination actions under Title VII. See Opinion of the District Court at 11-12, attached in the Appendix hereto.

The District Court issued a thirty page opinion making detailed findings of fact and conclusions of law in holding that the Company did not discriminate against the petitioner because of his race.

In a per curiam decision issued July 31, 1984, the United States Court of Appeals for the Sixth Circuit affirmed the District Court's judgment by concluding that the District Court's findings of fact "are not clearly erroneous and that the conclusions of law are in accordance with controlling legal principles." It is from this order that petitioner seeks review.

ARGUMENT

The Petition For A Writ of Certiorari Should Not Be Granted Because Federal Law Does Not Require The Courts Of Appeals To State Findings Of Facts Or Conclusions Of Law In The Exercise Of Their Appellate Jurisdiction.

Petitioner seeks review on the basis that the United States Court of Appeals for the Sixth Circuit failed to separately state findings of fact and conclusions of law by essentially arguing that the appellate court has departed from the accepted and usual course of judicial proceedings contrary to federal law. The petitioner's argument is without merit and does not constitute a special or important reason, pursuant to Rule 17 of the Rules of the Supreme Court, why this Court should exercise its discretion and grant review because: 1) there is no duty in law requiring a court of appeals to make findings of fact and conclusions

of law, but rather, the appellate court's function is to review the trial court's findings of fact and conclusions of law; and 2) the accepted and usual practice in appellate proceedings, as supported by this Court in the interest of judicial economy, does not require any written opinion in any case reviewed.[1]

In fact, the statute cited by the petitioner for the proposition that circuit courts must make findings of fact and conclusions of law applied only to courts of admiralty and maritime jurisdiction,

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[1]Petitioner does not present a federal question about which there is a conflict among federal courts of appeals, among state courts of last resort, or between a federal court of appeals and a state court of last resort. R.S.Ct. 17(.1)(a) and (.1)(b). Nor does petitioner present an important question of federal law which this Court has not decided. R.S.Ct. 17(.1)(c). In fact, petitioner has failed to raise any reason why the court of appeals improperly affirmed the decision of the district court or why the district court erred.

and it has been repealed. See Act of Feb. 16, 1875 ch. 77, § 1, 18 Stat. 315, repealed by Schedule of Laws Repealed, 63 Stat. 109, ch. 139, § 141 (May 29, 1949). E.A. Packer v. New Jersey Lighterage Co., 140 U.S. 360 (1891) is also inapposite because it relies on the repealed statute cited by petitioner and because, unlike the present case, it involved this Court's review of a trial court's decision. See Act of March 3, 1825, ch. 137, § 1, 18 Stat. 470. The case did not address the issue of whether an appellate court must make findings of fact and conclusions of law.

Neither statutory nor common law requires a court of appeals to make findings of fact and conclusions of law and the Federal Rules of Appellate Procedure expressly contemplate that appellate courts may render judgments without writing an opinion. Furman v. United States, 720 F.2d 263, 264 (2d Cir. 1983).

Rule 36 provides in pertinent part:

> The notations of a judgment in the docket constitutes entry of the judgment.... If a judgment is rendered without an opinion, the clerk shall prepare, sign and enter the judgment following instruction from the court. The clerk shall, on the date judgment is entered, mail to all parties a copy of the opinion, if any, or of the judgment if no opinion was written, and notice of the date of entry of the judgment. (Emphasis added).

It is not the function of an appellate court to conduct a trial de novo, but rather, it is only required to review the decision of the trial court to ensure that the findings of fact are not clearly erroneous and that the decision is in accord with applicable law. Securities and Exchange Commission v. Chenery, 318 U.S. 80, 88 (1943); Kelley v. Everglades Drainage District, 319 U.S. 415, 421-22 (1943). For example, Rule 52(a) of the Federal Rules of Civil Procedure provides that "[i]n all actions tried upon the facts without a jury... the court shall

find the facts specially and state separately its conclusions of law [and]...findings of fact should not be set aside unless clearly erroneous." Once a court of appeals determines that the trial court's findings are not clearly erroneous it would be an absurd and totally inefficient use of judicial resources to require it to state separately its own findings of fact and conclusions of law.

This Court has stated "we, of course, agree that the courts of appeals should have wide latitude in their decisions of whether or how to write opinions. That is especially true with respect to summary affirmations." Taylor v. McKeithen, 407 U.S. 191, 194 n.4 (1972); See also United States v. Baynes, 548 F.2d 481 (3d Cir. 1977). In fact, summary affirmations are encouraged when appropriate, for the purpose of easing the overloaded dockets of the courts of appeals. NLRB v.

Amalgamated Clothing Workers of America AFL-CIO, Local 990, 430 F.2d 966 (5th Cir. 1970). In Amalgamated Clothing Workers, supra, the Court held:

> From the standpoint of the function of an appellate court opinion, little is to be served by an elaborate discussion at all on the underlying facts which the court, after mature study are not demonstrated to be clearly erroneous under F.R.Civ.P. 52(a). Id. at 971.

The present case is substantially similar to Furman v. United States, supra, in which petitioner for a writ of habeas corpus argued that the court of appeals in his original appeal erred because it affirmed his conviction summarily. In holding that this argument was without merit, the court stated that summary orders are needed to preserve judicial time for cases that raise new or significant issues and to limit the number of published opinions which must be reviewed by other judges and lawyers. Preparation

of formal opinions "would place a substantial counterproductive burden on the court." Id. at 266.

In the present case, the court of appeals affirmed the decision of the district court and the petitioner has not alleged that the court of appeals failed to give adequate consideration to his claims on appeal. It is the trial court's findings, therefore, that remain dispositive of petitioner's claims of racial discrimination regardless of the length or content of the appellate court's decision.[2] Thus, the petition for a writ of

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[2]Although petitioner's stated "questions presented" involve only the issue of whether the court of appeals erred by failing to separately state findings of fact and conclusions of law, by implication, petitioner generally attacks the trial court's findings as erroneous. However, petitioner has failed to identify any specific error, and, he has not stated any special or important reason, as required by Rule 17 of the Rules of the Supreme Court, why this Court should review the district court's decision. The court of appeals has held that the district court's findings were not clearly erroneous. This

certiorari should be denied because findings by the appellate court would be a meaningless exercise of valuable judicial resources.

Court should not grant a writ of certiorari merely to review evidence or inferences drawn from the evidence. General Talking Pictures Corp. v. Western Electric Corp., 304 U.S. 175 (1938).

CONCLUSION

For the reasons stated above, AT&T Technologies, Inc. requests this Court to deny the petition for a writ of certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Brief of Defendant-Appellee has been forwarded to Mr. Gary S. Carson, 1808 Franklin Avenue, Columbus, Ohio 43205, this 1st day of ~~October~~ November, 1984.

David R. Kelleher

David R. Kelleher